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February 24, 1999

BY HAND DELIVERY

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEB 24 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re:

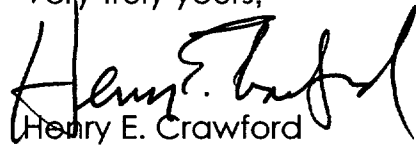
In the Matter of Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (Cross Plains, et. al.) MM Docket No. 98-198; RM-9304
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Dear Ms. Salas:

Transmitted herewith on behalf of Wagonwheel Broadcasting of Santa Anna are an original and four (4) copies of its "Motion to Strike" as directed to the Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,


Henry E. Crawford
Counsel for
Wagonwheel Broadcasting of
Santa Anna

cc: the Allocations Branch

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Cross Plains, Texas et al.)

MM Docket No. 98-198

RM-9304

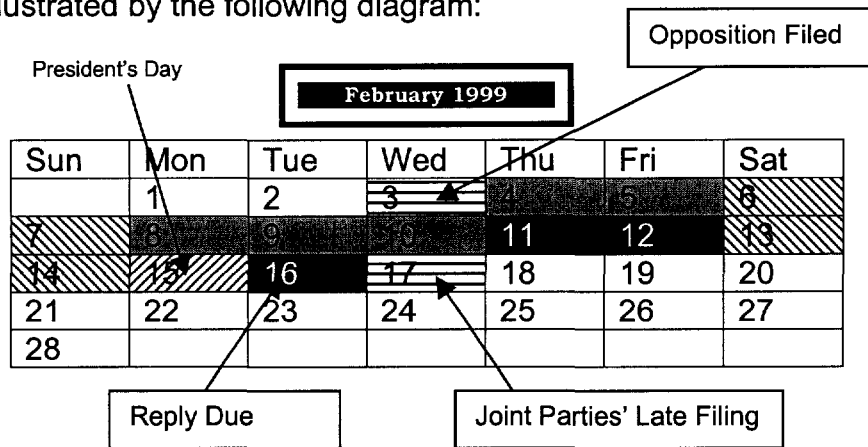
To: The Allocations Branch
Policy and Rules Division
Mass Media Bureau

MOTION TO STRIKE

Wagonwheel Broadcasting of Santa Anna ("Wagonwheel"), by counsel, in accordance with 47 CFR §1.45, hereby moves to strike the *Reply to Opposition to Joint Motion to Strike* ("Joint Reply") filed in the above-referenced proceeding by First Broadcasting Management, L.L.C. ("FBM"), WBAP/KSCS Operating, Ltd. ("WBAP"), Blue Bonnet Radio, Inc. ("Blue Bonnet") and Hunt Broadcasting Inc. (collectively referred to as the "Joint Parties") on February 17, 1999. The pleading was filed out-of-time and cannot be accepted in this proceeding for any reason. In support thereof, the following is stated.

1. In pleading cycles involving routine motions, Section 1.45(b) of the Commission's Rules requires that any reply pleading be filed no later than 5 days after the time for filing oppositions has expired. Wagonwheel filed its opposition on February 3, 1999.

2. Section 1.4(g) of the Commission Rules states that where, as here, the filing period is less than 7 days, intermediate holidays shall not be counted in determining the filing date. Additionally, Section 1.4(h) allows for 3 extra days (excluding holidays) where the document is served by mail. In accordance with the interplay of these rules, the Joint Parties' reply pleading was due to be filed no later than Tuesday, February 16, 1999. However, the Joint Parties failed to adhere to these rules and instead filed on Wednesday, February 17, 1999. These facts are illustrated by the following diagram:



It is ironic that although unable comply with the Commission's deadline rules, the Joint Parties have sought herein to strike Wagonwheel's Reply Comments for not serving each joint counsel individually.

3. As the Joint Reply readily concedes, service was made on "another counsel to the joint filing".¹ Moreover, the Joint Parties have still not shown any prejudice at all. Instead, they argue simplistically that there is "no case law" in support of Wagonwheel's position.² However, the fact that service on a joint party is binding on all joint parties flows necessarily from the legal definition of joint

¹ Joint Reply, p. 4, ¶4

² *Id.*

action.³ Having chosen to act as joint parties, service on any one joint party binds the other joint parties.

4. Compounding the errors made in this proceeding by the Joint Parties, it is now claimed for the first time that:

Counsel to the joint parties has now received service of a filing in which ALALATEX has withdrawn its interest in applying for a Cross Plains station.

Joint Reply, p. 2, ¶2. Interestingly, Wagonwheel has not been served with any filing from ALALATEX. However, given the conflict between the ALALATEX proposal and Wagonwheel's 290C2 proposal at Santa Anna, service on Wagonwheel was required.

5. ALALATEX's apparent sudden disappearance from Cross Plains suggests the very pattern of abuse that Wagonwheel noted in its Opposition.⁴ While parties have been known not to file comments in support of their original proposals, it can only be indicative of abuse when the withdrawal occurs after the time for counterproposals and, in fact, contradicts a statement of support submitted by that party at the time for counterproposals. Once again the Joint Parties have attempted to perfect their defective proposal in a wholly untimely manner.

6. In sum, the Joint Parties were a day late and a dollar short in filing their reply pleading. Their delinquent conduct has, again, prejudiced the parties

³ See, *Black's Law Dictionary, Fifth Edition*, p. 751: **Joint**. United; combined; undivided; done by or against two or more unitedly; shared by or between two or more; coupled together in interest or liability.

⁴ Opposition, pp. 5-6, ¶¶10-11.

and the Commission by requiring yet another pleading cycle in this already protracted proceeding. The Joint Parties have also used the opportunity to inject new facts and argument into the proceeding, long after the appropriate time has past. In view of the above, Wagonwheel respectfully requests that the Joint Reply be stricken from the record in its entirety.

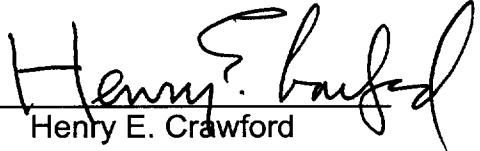
WHEREFORE, Wagonwheel Broadcasting of Santa Anna respectfully requests that the Reply to Opposition to Joint Motion to Strike filed by First Broadcasting Management, L.L.C., WBAP/KSCS Operating, Ltd., Blue Bonnet Radio, Inc. and Hunt Broadcasting Inc. be stricken from the record.

February 24, 1999

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Respectfully Submitted,

Wagonwheel Broadcasting
of Santa Anna

By: 
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CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing Motion to Strike have been served by United States mail, postage prepaid this 24th day of February, 1999 upon the following:

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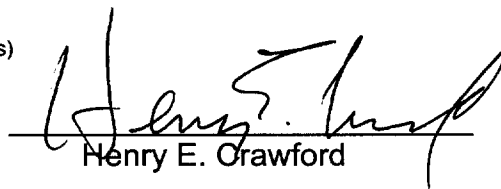
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